

Safeguarding Vulnerable Adults Policy

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1. Background and principles of the policy

- 1.1 Government guidance documents issued in 2000 (No Secrets, Department of Health and In Safe Hands, Welsh Assembly Government) identified the problem in society of vulnerable adults being abused in a range of ways, including financially. The guidance requires local authorities to co-ordinate multi-agency arrangements to prevent abuse where possible, and to identify and deal with abuse where it is occurring.
- 1.2 The Mental Capacity Act 2005 introduced a statutory duty for the Public Guardian to supervise, investigate concerns and regulate Court appointed Deputies, and investigate complaints or concerns about the actions of registered attorneys and people acting under an order of the Court of Protection. The Office of the Public Guardian (OPG) will strive to ensure that vulnerable adults receive their entitlement to safeguards that:
- Prevent abuse from occurring and/or continuing where possible
 - Identify abuse promptly
 - Ensure the abuse ceases and the perpetrator is dealt with wherever possible
 - Undertake to notify Local Authorities/Police and other appropriate agencies when an abuse situation is identified

It will do so by carrying out its statutory duties, and by thoroughly investigating reported concerns about the conduct of Deputies and registered Attorneys.

- 1.3 The policy provides a framework for delivering the OPG's role in safeguarding vulnerable adults. It is supported by the OPG's "Safeguarding Vulnerable Adults Procedures and Guidance" and the "Office of the Public Guardian and Local Authorities: Working together to safeguard vulnerable adults". These documents are available on the OPG website and intranet.

2. Interpretation

- 2.1 A vulnerable adult is described in "No Secrets" and "In Safe Hands" as a person *'who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of him or her self, or unable to protect him or her self against significant harm or exploitation'*¹ Primary responsibility for safeguarding all vulnerable adults falling within this definition remains with the local authority Social Services authority. In the context of adult

¹ 'No Secrets – Guidance on developing and implementing multi agency policies and procedures to protect vulnerable adults from abuse' *Department of Health/Home Office 2000.*

protection the term “vulnerable adult” includes some people who may have capacity as well as those who do not.

- 2.2 The OPG uses a more narrowly defined interpretation of vulnerable adult related to the Public Guardian’s statutory duties.
- 2.3 The OPG’s *Safeguarding Vulnerable Adults Policy* covers any person:
- who has a Deputy appointed by the Court of Protection, *or*
 - is the Donor of a registered Enduring Power of Attorney (EPA) or Lasting Power of Attorney (LPA) *or*
 - is someone for whom the Court of Protection authorised a person to carry out a transaction on their behalf under s16(2) of the Mental Capacity Act 2005 (single orders).

This includes young people aged 16 or over who are defined as adults under the Mental Capacity Act 2005.

- 2.4 Vulnerable adults who come within the OPG’s definition will be referred to within this policy as “clients”.
- 2.5 Local authority social services departments use different names for the team dealing with adult protection/safeguarding adults, and will be referred to within this policy as Adult Care Social Services departments.
- 2.6 References to “staff” throughout this policy should be taken to include permanent, temporary and agency staff, Court of Protection Visitors and contractors.

3. Remit of the policy

- 3.1 This policy relates to all forms of abuse. These are described in a later section. In 2002 the Public Guardianship Office (PGO) commissioned a research project into the role of the PGO in safeguarding vulnerable adults against financial abuse and the resulting report also provides some useful background.²
- 3.2 This policy supports the Public Guardian’s statutory role of supervising Deputies appointed by the Court of Protection, and investigating complaints or concerns about the actions of registered attorneys and people acting under an order of the Court of Protection. It provides a framework for OPG staff, Court of Protection Visitors and contractors to help them recognise and manage suspicions, allegations and findings of abuse of any vulnerable adult who comes within the definitions in Section 2 above.

² ‘The role of the Public Guardianship Office in safeguarding vulnerable adults against financial abuse’ *Salomans – Canterbury Christ Church University College 2002.*

- 3.3 This policy is supported by a protocol for working with local authority Adult Care Social Services departments on safeguarding vulnerable adults. Adults make up the majority of OPG clients. Allegations of abuse of vulnerable children (or young people aged up to 21 in specific circumstances) will usually be dealt with by local authority Children's Services rather than Adult Care Social Services. Where allegations of abuse relate to a child or young person, the OPG will refer to the police and/or local authority Children's Services department.
- 3.4 The OPG will refer concerns and allegations relating to people not covered by its policy to Police/Adult Care Social Services/Childrens Services.

4. What is abuse?

- 4.1 Abuse is a violation of an individual's human and civil rights by another person or persons. Abuse may consist of a single act or repeated acts.³ It may be physical, verbal or psychological, it may be an act of neglect or an omission to act, or it may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he is she has not consented, or cannot consent. Abuse can occur in any relationship and may result in significant harm to, or exploitation of, the person subjected to it.
- 4.2 Some types of abuse will constitute a criminal offence, in which case adults who lack capacity are entitled to the protection of the law in the same way as any member of the public. Whenever a criminal offence is suspected the OPG will make a referral to the police. It may be necessary to make an urgent referral for the public safety of the vulnerable person and/or to protect or preserve evidence. Staff should refer to the section on crime in the *OPG Safeguarding Vulnerable Adults Procedures and Guidance* that accompanies this policy.
- 4.3 Different forms of abuse, which may be isolated incidents or ongoing and may be perpetrated as the result of deliberate intent, negligence or ignorance, can include, but is not limited to the following:
- Physical Abuse
Includes hitting, slapping, pushing, kicking, misuse of medication, restraint or inappropriate sanctions.
 - Sexual abuse
Includes rape and sexual assault or sexual acts to which the vulnerable adult has not consented, or could not consent or was pressured into consenting.

³ 'No Secrets – Guidance on developing and implementing multi agency policies and procedures to protect vulnerable adults from abuse' *Department of Health/Home Office 2000.*
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- Psychological/emotional abuse
Includes emotional abuse, threats of harm or abandonment, deprivation of contact, humiliation, blaming, controlling, intimidation, coercion, harassment, verbal abuse, isolation or withdrawal from services or supporting networks.
- Neglect and acts of omission
Includes ignoring medical or physical care needs, failure to provide access to appropriate health, social care or educational services, the withholding of the necessities of life, such as medication, adequate nutrition and heating. Research has shown that neglect is the most prevalent form of abuse of elders in the UK, with financial abuse a close second.
- Discriminatory abuse
Includes ageist, racist, sexist, that based on a persons disability, and other forms of harassment, slurs or similar treatment.
- Financial or material abuse
Financial abuse can range from failure to access benefits, through inadvertent mismanagement and opportunistic exploitation to deliberate and targeted abuse, often accompanied by threats and intimidation.⁴ It can include theft, fraud, exploitation, pressure in connection with wills, property or inheritance or financial transactions, overcharging or carrying out unnecessary work, or the misuse or misappropriation of property, possessions or benefits

4.4 Abuse can take many forms. It does not have to fit comfortably into any of the above. Abuse can be perpetuated by one vulnerable adult towards another. This is still abuse and should be dealt with accordingly. A vulnerable adult may also be neglecting him/herself which could also be regarded as abuse. For advice, staff should consult their manager or the Compliance and Regulation Manager.

4.5 Alerts to possible abuse

Abuse can take place in any setting, and to any vulnerable adult, whether living alone or with a relative, in a nursing, residential or day care setting, hospital, custodial situations or when support services are coming into people's own homes, etc. However there are some circumstances where the risks may be assessed as higher and staff should be on alert if any of the following apply:

4.6 Alerts to financial abuse

Financial abuse is the main form of recorded abuse amongst vulnerable adults. Financial abuse can occur in isolation, or as research has shown, where there are other forms of abuse, e.g. sexual

⁴ Help the Aged (2008) The Financial Abuse of Older People – A review of the literature.
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abuse or physical abuse, there is likely to be financial abuse occurring also. This is not always the case but staff should be aware of this potential.

4.7 Indicators of financial abuse include:⁵

- the vulnerable adult's change in living conditions;
- possessions sold;
- inability to pay bills/unexplained shortage of money;
- unexplained withdrawals from an account;
- unexplained loss/misplacement of financial documents;
- cut off from family/friends/social network;
- carer's enhanced lifestyle;
- sudden changes in bank account or banking practice;
- the recent addition of authorised signers on a vulnerable person's signature card;
- unauthorised withdrawal of funds using the vulnerable person's ATM card, or changes in patterns of usage;
- sudden or unexpected changes in a will or other financial documents.

4.8 The above are illustrations of potential indicators of abuse. It does not mean that it is proof of actual abuse but may require further scrutiny. It is not an exhaustive list.

4.9 **Alerts to other forms of abuse**

There are a number of characteristics that may increase the risk of abuse. These include:

- Records of previous abuse or suspected abuse to client
- Previous abuse to other members of client's family
- The presence of family tensions and conflicts
- Predisposing factors to abuse have been shown to include: advanced age (75+) female, organic brain injury, cognitive impairment, physical, mental or emotional dysfunction especially depression, recent loss of spouse, social isolation, living alone, estranged from children⁶

4.10 Fuller details of possible indicators and predisposing factors which may lead to abuse are outlined in Appendix 1. These are examples only based on recorded cases of abuse, and staff should remain vigilant and aware of the potential for abuse in any situation. OPG staff will not always be in a position to identify factors or indicators in individual cases.

⁵ Help the Aged (2008) The Financial Abuse of Older People – A review of the literature

⁶ Help the Aged (2008) The Financial Abuse of Older People – A review of the literature.

5. Who may be the alleged abuser?

- 5.1 Vulnerable adults may be abused by a wide range of people including relatives and family members, professional staff, paid care workers, other vulnerable adults, volunteers, other service users, neighbours, friends, associates, people who deliberately exploit vulnerable people, strangers and opportunistic people.
- 5.2 There is often particular concern when abuse is perpetrated by someone in a position of power or authority who uses his or her position to the detriment of a vulnerable adult. This is particularly relevant to the OPG whose client group is people lacking mental capacity.
- 5.3 It may be the case that a member of OPG staff or a contractor is suspected of abuse against a client. If anyone suspects a member of staff of abuse they need to report this immediately to their line manager or a senior colleague, or in the case of Court of Protection Visitors, to the Visits Manager or Head of Supervision. In the case of employed staff, any investigation will be conducted following HR policies and procedures. The *OPG Fraud Response Policy* which underpins the *MoJ Fraud Policy*, details how any suspicion of fraud by staff should be reported and investigated and will be followed where the alleged abuse is financial. All policies can be found on the OPG and MOJ intranet, and copies made available to staff and Court of Protection Visitors who do not have access to the intranet.

6. The OPG's role in safeguarding vulnerable adults

- 6.1 The OPG may be involved in a number of ways, including:
- Promoting and raising awareness of legal safeguards and remedies, e.g. Lasting Powers of Attorney, and the services of the OPG and Court.
 - Receiving reports of abuse relating to vulnerable adults (whistle blowing)
 - Responding to requests to search the register of Deputies and Attorneys (provided free of charge to Local Authorities and registered health bodies).
 - Investigating reported concerns, on behalf of the Public Guardian, about the actions of a Deputy or registered Attorney, or someone acting under a single Order from the Court of Protection.
 - Working in partnership with other Agencies, including Adult Care Social Services and the Police, in various ways, which may include:
 - Referring suspicions and allegations to external agencies where appropriate (see list in 8.5)

- Participating in meetings/case conferences with Adult Care Social Services and other agencies
- Participating in joint investigations of suspected abuse
- Supervising Deputies appointed by the Court of Protection to make decisions on behalf of vulnerable adults.
- Reviewing client files and monitoring the situation through visits where abuse is known to have occurred previously or there is considered to be an ongoing risk of abuse
- Making applications to the Court of Protection for suspension, discharge or replacement of a Deputy or to cancel registration and revoke an EPA/LPA.
- Providing reports to the Court of Protection under Sections 49 and 58 of the Mental Capacity Act 2005 to assist the Court in decision-making.
- Ensuring systems are in place to prevent/reduce the likelihood of abuse of vulnerable adults by OPG staff and contractors
- Development and review of strategies and policies regarding protection of its clients, in partnership with other government departments and agencies, external agencies, key partners and stakeholders, including but not limited to, the Department of Health, Welsh Assembly, Department of Work and Pensions, British Bankers' Association.

7. The Statutory Role of the Public Guardian

7.1 Under its statutory powers the OPG, on behalf of the Public Guardian, will be involved in safeguarding vulnerable adults in the following ways.

7.2 Investigations

7.3 The OPG can carry out an investigation into the actions of a Deputy, a registered Attorney (LPA or EPA) or someone authorised by the Court of Protection to carry out a transaction for someone who lacks capacity, and report to the Public Guardian or Court of Protection. The nature and pattern of an investigation is determined in each case at the start. Typically it will involve contact with people and agencies associated with the client, requests for copies of accounts, review of decisions and transactions, review of OPG file records, etc. The OPG can require a Deputy or Attorney to provide specified information or documents when investigating complaints or concerns.

7.4 As part of an investigation, the OPG may visit a client or Deputy, or a Donor or Donee of a registered Enduring or Lasting Power of Attorney. Visits may be carried out by a Court of Protection Visitor. In which case, Regulation 44 of the Lasting Powers of Attorney, Enduring Powers of Attorney and Public Guardian Regulations provides that a report may be disclosed, where the Public Guardian considers it is appropriate, to any person interviewed in the course of preparing the report.

7.5 The OPG publishes Key Performance Indicators that set out timescales for initiating and concluding investigations. These can be found in the OPG's business plan, available on the OPG website.

7.6 Exclusions from investigations

7.7 The Public Guardian does **not** have statutory authority to conduct investigations in the following scenarios. However, the Court of Protection and/or OPG may become involved, as detailed below:

- **Concerns about the actions of Attorneys acting under an unregistered EPA**

In this scenario the OPG will normally make a referral to Adult Care Social Services for an investigation under their procedures which will determine how to continue. If the donor of the EPA lacks capacity to make decisions, the OPG may advise that an application is made to the Court of Protection for revocation of the EPA and the appointment of a Deputy. The Court will sometimes order the Public Guardian to provide a report under Section 49 of the Mental Capacity Act in such cases. If the donor of the EPA has capacity, then the OPG may suggest that a local agency/solicitor or third party could help her/him decide whether to revoke the EPA and make an LPA.

- **Concerns about the actions of persons acting under certain types of Court of Protection Short Orders**

Short Orders were granted by the Court of Protection prior to implementation of the Mental Capacity Act in October 2007. The Public Guardian does not have powers to investigate all short order scenarios. Short order "applicants" (as the person acting was known) were not converted to Deputies by the Mental Capacity Act and therefore the Public Guardian does not have legal authority to investigate complaints. However, it may be possible for the OPG to investigate single transactions that were authorised by way of short order. Where they do not have authority, the OPG will normally make a referral to Adult Care Social Services for an investigation under their procedures which will determine how to continue and/or advise that an application is made to the Court for Protection for revocation of the Order, and if, necessary, for an Order appointing a Deputy. The application could include authority to investigate the transactions of the person acting under the Short Order.

- **Concerns about the actions of former Receivers or Deputies**

Where there are concerns about the actions of a former Receiver (ie someone whose appointment was terminated prior to 1 October 2007) or a Deputy whose appointment has terminated, the OPG will normally advise that this is a matter for the current

Deputy, if there is one, to deal with. This includes scenarios where the former Receiver or Deputy has died. If the Court of Protection terminates a Deputyship due to concerns about the actions of the Deputy, the Court may order any new Deputy who is appointed to investigate the former Receiver or Deputy. Sometimes concerns arise after the vulnerable adult has died. Any Deputyship terminates on death and it falls to the vulnerable adult's personal representatives to deal with any investigation.

Where a Deputy has been discharged, or has died, or the vulnerable adult has died, the OPG can call for a final report from the former Deputy (or the personal representatives if the Deputy has died). If the Public Guardian is not satisfied, he may apply to the Court of Protection for enforcement of the security bond. This only applies to deaths/discharges after 1 October 2007.

- **Concerns about the actions of third persons other than Deputies and Attorneys**
In this scenario the OPG will make a referral to Adult Care Social Services for an investigation under their procedures which will determine how to continue. If the vulnerable adult has an appointed Deputy then the OPG will want to be kept informed of the situation and could contribute to the action by monitoring the situation through supervision of the Deputy and visits to the vulnerable adult from a Court of Protection Visitor.
- **Concerns about persons acting under an appointeeship made by the Department of Work and Pensions (DWP)**
In these circumstances, the OPG will refer to the Department for Work and Pensions and make a referral to Adult Care Social Services for investigation under their procedures.

7.8 Supervision

7.9 The Public Guardian has a statutory duty to supervise Deputies appointed by the Court of Protection to make decisions on behalf of someone who lacks capacity. Supervision is an important part of safeguarding, involving the following activities:

- **Preventative measures**, e.g. calling for Deputy reports, ensuring Deputies pay security premiums;
- **Monitoring the Deputy's decision making**, e.g. through checking Deputy reports, regular contact with the Deputy and others with an interest in the client's welfare, and through visits by a Court of Protection Visitor;
- **Responding** to concerns and complaints about the actions of the Deputy, and making applications to Court to discharge unsuitable Deputies.

7.10 Remedies

- 7.11 The OPG will consider a range of remedies where abuse has been discovered. It may:
- Apply to the Court for the **suspension, discharge or replacement of a Deputy**
 - Apply to the Court for an **Order to be varied or for a Deputy's security Bond to be called in or varied**
 - Apply to the Court for a **revocation of a Power of Attorney**
 - Inform the **Police**, where a crime may have been committed
 - Require a Deputy to **provide a final report** where the person s/he was acting for has died or the Deputy has been discharged. If the Deputy has died, the Public Guardian can require the Deputy's personal representatives to submit a final report.
 - Monitor the situation through ongoing close **supervision** of the case.
 - Inform **external agencies** (see list in 8.5). This will include notifying any professional body, where the perpetrator is a member, and the Independent Safeguarding Authority (from October 2009).

8. Involving external agencies

- 8.1 Adult Care Social Services play a co-ordinating role in developing the local policies and procedures for the protection of vulnerable adults from abuse. They are often, though not always, the organisation that takes the lead in dealing with a case of abuse. It will depend on whether the person falls within the definition of vulnerable adult (see paragraph 2.1) as well as which agency has the most appropriate expertise. Initial investigations can be undertaken by any agency; the agency most involved with the client may be the most appropriate to lead this investigation in the first instance, with the involvement (whether in the form of action, information sharing or advice) of Adult Care Social Services at all stages.
- 8.2 After discussion with a line manager or senior colleague any suspected abuse must be referred by OPG staff without delay to the appropriate Adult Care Social Services. The process for referrals is outlined in the *Protocol for joint work between the Office of the Public Guardian and Local Authorities for Safeguarding Vulnerable Adults*. Local Authority processes will vary but each Adult Care Social Services' response will be within a framework based on the "No Secrets"/"In Safe Hands" guidance. They will have a process in place to arrange strategy meetings and strategy discussions. Any investigation must be agreed through this strategy meeting and discussion process so that initial enquiries do not jeopardise any subsequent police investigation. Typically, the process followed by local authorities is an eight stage one set out in the Association of Directors of Social Services (ADASS) guidance *Safeguarding Adults (2005)* :

Stage	Function	Recommended time frame
1. Alert	Reporting and recording any allegations, suspicions or concerns of abuse or neglect, and dealing with immediate protection.	Immediately, on the same day
2. Referral	Referral made in a multi agency context to Local Authority Adult Care Social Services team, Police or CSCI/CSSIW	Within the same working day
3. Decision to investigate	Whether it is appropriate to invoke adult safeguarding procedures. If not, identifying alternative responses.	By the end of the next working day.
4. Safeguarding assessment strategy	Formulating a multi-agency plan for assessing the risk and addressing any immediate protection needs.	Within 5 working days
5. Safeguarding assessment and investigation	Co-ordinating the collection of the information about abuse/neglect that has occurred or might occur. This may include an investigation, e.g. a criminal or disciplinary investigation.	As decided through the strategy, but within 4 weeks of the referral.
6. Safeguarding plan	Analysis of the concern, the investigation and the context undertaken at multi-agency Safeguarding Case conference. Safeguarding plan developed at case conference and core group identified to monitor and review.	As soon as possible, but within 4 weeks of the referral.
7. Review	Review of the plan.	First review within 3 months, then 6-monthly.
8. Recording and monitoring	Record and monitor the Safeguarding Adults process and its outcomes.	On-going

8.3 The role of the OPG will need to be determined in each case as it arises. It may:

- Take responsibility for investigating. This course of action is taken where the Public Guardian has statutory powers under the Mental Capacity Act 2005 to investigate the actions of someone acting under a registered attorney or an Order of the Court of Protection (see 7.2 -7.5 above). If this course of action is taken Adult Care Social Services and/or the Police can still be informed of the allegation or suspicion. It is NOT necessary to establish that abuse has occurred before a referral to Adult Care Social Services or the Police.
- Refer straight to Adult Care Social Services and/or the Police, if the Public Guardian has no statutory authority to investigate.

- Work in partnership with other agencies (in particular Adult Care Social Services) to investigate and deal with an allegation or suspicion relating to an OPG client.

8.4 The *OPG Safeguarding Vulnerable Adults procedures and guidance* provides information on when and how to make a referral.

8.5 Who is involved in dealing with any suspicion, allegation or findings of abuse will depend on who is already, or 'should' be, involved with a client, for instance:

- Commissioners of Health and social care services
- Providers of health and social care services
- Providers of sheltered or supported housing
- Registered Social Landlords/Housing Trusts/Local Authority Supporting People teams
- Regulators of services e.g. Commission for Social Care Inspection (CSCI), Care and Social Services Inspectorate Wales (CSSIW), Health Care Commission/Inspectorate, Strategic Health Authority. N.B. from April 2009 the Care Quality Commission take over from CSCI and the Healthcare Commission as the regulator of health and social care in England.
- NHS care Trusts, Primary Care Trusts, Hospital Trusts
- Police/Crown Prosecution Service/Coroners) and other law enforcement agencies, e.g. trading standards
- Probation Services/Multi-Agency Public Protection Arrangements (MAPPA)
- Financial institutions, e.g. banks, Court Funds Office.
- Voluntary and private sector agencies
- Victim Support Services
- Emergency services – Fire/Ambulance
- Community safety
- Other local authority departments e.g. housing and education
- Probation services
- Department of Work and Pensions (DWP)
- Carers support groups
- User groups and user-led services
- Advocacy providers/Mental Capacity Advocates (IMCAs)
- Advisory services/welfare rights services
- Community safety partnerships
- Services meeting the needs of specific groups experiencing violence
- Agencies offering legal advice and representation

The OPG will discuss and agree the need to involve other agencies with Adult Care Social Services or the lead agency in any investigation.

8.6 **Reporting to the Police**

- 8.6.1 If an incident of abuse is considered to be a criminal offence then the OPG will refer to the Police. Examples of when action may be considered a criminal offence include: assault, whether physical or psychological, sexual assault and rape, theft, fraud or other forms of financial exploitation, and certain forms of discrimination, whether on racial or gender grounds⁷.
- 8.6.2 In addition, the Mental Capacity Act 2005 specifically states that a Deputy or Attorney is guilty of an offence if s/he ill treats or wilfully neglects the client.
- 8.6.3 Whether to involve the police will be a matter for the Compliance and Regulation Manager or Head of Supervision or in urgent situations a member of the executive team, if necessary in consultation with the OPG Legal Advisor, as it will not always be clear-cut.
- 8.6.4 The *OPG Safeguarding Vulnerable Adults procedures and guidance* contains details of how to make referrals and what to do in emergency situations.

8.7 **OPG Policy relating to Adult Care Social Services relationships**

The Protocol for joint work between the Office of the Public Guardian and Local Authorities for safeguarding vulnerable adults⁸ describes the OPG's relationship with Adult Care Social Services.

8.8 **Sharing of information**

8.8.1 The OPG promises its clients that their information is managed, processed and cared for in line with statutory requirements, and in accordance with the organisation's own values of being straightforward, accessible, and professional. As the OPG handles sensitive personal information about people, including personal identity information and information about health and financial issues, it must ensure that there is no unauthorised access, loss, misuse, modification or disclosure of this information. When safeguarding vulnerable adults, there may be a need to disclose personal or sensitive information to someone from another organisation. The OPG will only do this when the law allows, and when disclosure will help its clients, or prevent a crime.

8.8.2 Understanding when and how to share information is critical when working with sensitive and personal information. The

⁷ No Secrets – Guidance on developing and implementing multi agency policies and procedures to protect vulnerable adults from abuse *Department of Health/Home Office 2000*.

⁸ Office of the Public Guardian and Local Authorities: *Working together to safeguard vulnerable adults OPG, 2008*.

principle is that – wherever abuse is alleged or suspected – information should be shared between relevant professionals in exploring how to protect the individual concerned or others. People who are subject to abuse or allegations of abuse and their families and carers have a right to expect that confidences will be respected and their privacy protected. But where their “vital interests”⁹ (that is questions of life or death), “best interests”,¹⁰ or the public interest are involved, establishing the facts through information sharing takes precedence.

- 8.8.3 Information can be shared in certain circumstances with other people or agencies in compliance with the Data Protection Act 1998. Data can be shared with third parties “in the vital interest of the data subject” or “in the public interest” (e.g. in the interest of the client or others in the same care setting). Examples of when this may be appropriate will be if there is a need to seek information from another agency, or there is a potential risk to others from the alleged abuser. Any information relating to the accusation/suspicion of abuse should and can be shared with the Adult Care Social Services department or Police investigating the case.
- 8.8.4 Additionally, there are specific provisions in the Mental Capacity Act 2005 that facilitate the sharing of information between the OPG and local authority Adult Care Social Services departments and other agencies involved in the care or treatment of the client. Section 58(2) of the Mental Capacity Act 2005 provides for the Public Guardian’s duties to supervise deputies and investigate concerns about the way a deputy or attorney is exercising their powers to be discharged “in co-operation with any other person who has functions in relation to the care or treatment of P”. Section 58(5) of the Mental Capacity Act 2005 gives the Public Guardian authority, in the course of carrying out his duties, to examine and take copies of any record of, or held by, a local authority and compiled in connection with a social services function, so far as the record relates to P. This authority does not extend to records relating to a deputy or attorney.
- 8.8.5 If personal or sensitive information is to be shared, this should be done where possible with the person’s agreement, after reasons have been explained. If this is not given, assessment of their best interests may still justify further enquiries, while questions involving the public interest may justify overriding their views. Where adults lack capacity to safeguard themselves, others will need to make decisions for them in accordance with

⁹ Data Protection Act 1998, Schedule 2, interpreted by the Information Commissioner

¹⁰ Report on the Review of Patient-identifiable Information from the Caldecott Committee (1977).

the Code of Practice and in the person's best interests. The rights of "whistle-blowers" and of alleged perpetrators of abuse must also be respected.

- 8.8.6 Information shared will be on a "need to know" basis, i.e. only information that is directly relevant to the investigation, and the minimum necessary to achieve the objective of protection of vulnerable adults. Care must be taken to ensure the quality of the information shared, e.g. names, addresses and dates of birth are accurately recorded.
- 8.8.7 There is guidance on "Information assurance and security", available on the OPG intranet, and in the *Protocol for Joint work between the Office of the Public Guardian and Local Authorities for safeguarding vulnerable adults.* Hard copies are available for staff and Court of Protection Visitors who do not have access to the intranet. Staff should seek advice when necessary from the OPG Records Manager, being mindful that it may be particularly important to share information for the protection of other possible abuse victims (e.g. in the case of a client living in a care home and being abused by a member of staff).

9. Assessing and responding to the level of risk

- 9.1 All suspicions or allegations of abuse will be taken seriously.
- 9.2 OPG staff should acknowledge that the needs of the vulnerable adult are paramount. With regard to incapacitated vulnerable adults, the OPG will always attempt to act in the best interests of the vulnerable adult, being mindful that the Mental Capacity Act 2005 encourages empowerment of vulnerable adults. Where an individual has capacity and is not acting under duress, threat, fear or intimidation, that person has the right to make an unwise decision.
- 9.3 All abuse or risk of abuse must be responded to promptly. The *OPG Safeguarding Vulnerable Adults procedures and guidance* sets out the timescales and process for responding to allegations of abuse.

10. Roles and Responsibilities of OPG staff

Senior Management team (SMT) and Agency Board

10.1 The Public Guardian has a responsibility to do whatever he can to ensure the safety and protection of vulnerable adults who fall under the jurisdiction of the OPG. This policy is therefore adopted by the Public Guardian, the OPG Executive Board and the senior management team of the OPG. They will promote the messages within it and ensure that all staff adhere to it at all times.

10.2 The SMT have the following responsibilities:

- To ensure that all staff they are responsible for are fully aware of the Safeguarding Vulnerable Adults Policy
- To promote the importance of the Policy
- To ensure that all staff they are responsible for can attend training and can access guidance to enable them to identify and deal appropriately with abuse and potential abuse situations
- To ensure that all staff they are responsible for are aware of reporting systems and that these are followed
- To ensure, through the performance management scheme, that all staff they are responsible for will document where they aim to and have positively contributed to the OPG's safeguarding role.

10.3 The following also have specific responsibilities:

- The **Head of Supervision** will be the person responsible for ensuring that the OPG adheres to this policy and that appropriate operational systems and processes are in place.
- The **Compliance and Regulation Manager** will be the named responsible person for overseeing safeguarding vulnerable adult issues. This person will ensure the OPG adheres to this policy and that it is reviewed regularly.
- The **Head of Performance and Change** will hold key relationships with external agencies and stakeholders in relation to safeguarding vulnerable adult issues and will have responsibility for staff, customer and stakeholder communications on safeguarding issues. The Head of Performance and Change will also have responsibility for facilitating staff learning and development on safeguarding issues.
- The **Head of Court Administration** will be responsible for ensuring that procedures are in place to alert the Head of Supervision to any Deputy Orders or pending applications for Deputyship where the Court is aware that abuse is suspected or has been known to have existed.

- The **Head of Finance and Resources** will be responsible for ensuring that safeguards are in place to prevent fraud or abuse by staff and contractors (e.g. through recruitment practices and CRB checks) and to manage any alleged fraud or abuse by a member of OPG staff or contractors. The Head of Finance and Resources will also have responsibility for the management of information assurance policies and practices, including ensuring there is a process for file marking and records management where abuse is suspected or proven.

Each manager responsible for a team of staff is responsible for ensuring that all staff understand, are skilled enough and adhere to this policy and procedures outlined in the *OPG Safeguarding Vulnerable Adults procedures and guidance*.

All staff

- 10.4 All staff will have access to a copy of this policy.
- 10.5 All staff will take responsibility for ensuring that they have read and understood this policy and the guidelines provided within it. If individuals are unsure of anything either upon reading it or when dealing with a client's case then they will seek advice or information from their line manager or the Compliance and Regulation Manager.
- 10.6 All staff will participate in briefings and training provided for them on safeguarding issues.
- 10.7 Where appropriate within their role, staff will agree objectives with their manager that contribute to the OPG's role in safeguarding vulnerable adults, and will document positive contributions they have made to that role.
- 10.8 All staff, but especially those having contact with vulnerable adults, clients, deputies and attorneys will use this policy and any other information provided to them for the purposes of identifying risk or incidences of abuse, and for acting appropriately in order to deal with such circumstances.
- 10.9 All staff will refer to guidance on information assurance and security when managing personal information about clients, deputies and attorneys.

Court of Protection Visitors (Visitors)

- 10.10 All Visitors will be provided with a copy of this policy
- 10.11 All Visitors will take responsibility for ensuring that they have read and understood this policy and the guidance and procedures that

accompany it. If individuals are unsure of anything either upon reading it or when dealing with a client's case then they will seek advice or information from the OPG Visits Manager or the Compliance and Regulation Manager.

- 10.12 All Visitors will participate in briefings or training provided for them on safeguarding issues in line with their terms of appointment with the OPG.
- 10.13 All Visitors will use this policy, their professional training and any other information provided to them for the purposes of identifying risk or incidences of abuse, and for acting appropriately in order to deal with such circumstances.

11. Training/briefings

- 11.1 All OPG senior managers, managers and team leaders will be expected to attend training or briefings on the responsibilities of the OPG, how to recognise abuse or the risk of abuse and what the OPG procedure is.
- 11.2 All OPG staff who have contact with clients, deputies, visitors and case files will be expected to attend training on this policy and guidelines.
- 11.3 Court of Protection Visitors will be expected to attend OPG briefing/training on this policy and in particular how to recognise abuse as part of their terms of appointment with OPG.
- 11.4 Training and briefing sessions will be provided at least every three years in order to keep all staff updated, and more often for senior managers with a lead responsibility.

12. Policy Review

- 12.1 This policy will be reviewed annually, or more often if changes to legislation or circumstances suggest a review. In 2008/09 the Department of Health is consulting on the Safeguarding Adults Guidance in England. This policy will be reviewed in line with any changes to the guidance.
- 12.2 The responsibility for ensuring this happens is the Head of Supervision.

Appendix 1

Possible indicators of/causal factors in abusive situations

The following are some of the common factors which may signal that there is danger of abuse occurring/having occurred. Considerable caution should be exercised when referring to these indicators as they do not automatically indicate a potentially abusive situation, but sometimes warrant investigation by local authority adult care social services departments, especially where multiple combinations or signs are present. Expert assessment and advice in individual situations can be sought from local authority safeguarding adults/adult protection leads.

Predisposing factors which may lead to abuse

- Increased dependency of the individual, leading to a high degree of care being required
- Multiple dependency within the family, e.g. young mother having to care for an older relative
- Multi-generational family structure where there are conflicts of personal interests and personal loyalties
- Where roles have been reversed, e.g. a domineering parent becomes dependent
- History of abuse within the family, e.g. domestic violence, abuse of children.
- Overcrowding or poor housing conditions
- Financial difficulties – low income, debts
- Adult has difficult behaviour which causes high levels of stress for other people, e.g. has hit/abused others, disturbs others at night, exhibits odd or embarrassing behaviour.
- Other members of the family have ill health (physical or mental) or there may be alcohol or drug dependency
- There are personal problems within the person's household, e.g. marital, financial
- Carers are isolated due to the demands of caring and lack practical or emotional support
- Carers may not have the necessary understanding of the person's condition to enable them to offer appropriate and effective care.

Signs of abuse

Financial signs

- Unexplained or sudden inability to pay bills
- Unexplained or sudden withdrawals of money from accounts

- Disparity between assets and satisfactory living conditions
- Lack of receptivity to assistance requiring expenditure, when finances are not a problem
- Extraordinary interest by family members or other people in the vulnerable person's assets
- Power of Attorney obtained when the person is not able to understand the purpose of what they are signing
- Unexplained eagerness to make an application to the Court of Protection to become a Deputy
- Recent change of deeds or title of property
- Carer apparently only interested in the person's financial affairs and not about their care
- The person who manages financial affairs is evasive or uncooperative
- Reluctance/refusal to take up care assessed as being needed
- A high level of expenditure without evidence of the person benefiting
- The purchase of items which the person does not require or use
- Personal items going missing from the home
- Unreasonable or inappropriate gifts

Physical signs

- History of unexpected falls or minor injuries
- Bruising, finger-marks
- Burns
- Injuries/bruising at different states of healing
- Injury shape similar to an object
- Injuries to face/scalp
- History of General Practitioner or agency "hopping", or reluctance to seek GP help
- Weight loss
- Rapid weight gain
- Subdued personality in presence of carer
- Ulcers, bed sores and being left in wet clothing
- Drowsiness due to too much medication
- Lack of medication, causing recurring crises/hospital admissions

Signs of neglect

- Physical condition is poor, e.g. bed sores, unwashed, ulcers
- Clothing in poor condition, e.g. unclean, wet, ragged
- Inadequate diet or malnutrition
- Untreated injuries or medical problems
- Inconsistent or reluctant contact with health or social care agencies
- Failure to engage in social interaction
- Refusal of access to callers/visitors
- Inadequate heating
- Failure to give prescribed medication or appropriate medical care

- Poor personal hygiene

Social and emotional signs

- Isolation, e.g. being confined to one room and denied social contact
- Unkempt, unwashed, smell of urine/faeces
- Over meticulous
- Inappropriately/improperly dressed
- Individual may be withdrawn, agitated, anxious
- Change in appetite leading to unusual weight gain/loss
- Insomnia/sleep deprivation or need for excessive sleep
- Tearfulness
- Unexplained paranoia
- Low self-esteem
- Excessive fears
- Confusion
- Agitation

Signs of sexual abuse

- Partial disclosure, e.g. the person uses repeated phrases like “it’s a secret” or “shut up, or I’ll hurt you”
- Medical/physical problems such as genital infections, love bites, bruising
- Disturbed behaviour such as sudden withdrawal from activities, loss of previous skills, loss of appetite or difficulty keeping food down, sleeplessness or nightmares, inappropriately seductive behaviour, self-injury
- Behaviour of others – the way someone else behaves, talks to or touches the vulnerable person

Signs of discriminatory abuse

- Lack of respect shown to an individual
- Signs of a sub-standard service being offered to an individual
- Repeated exclusion from rights such as health, education, employment, criminal justice and civic status
- Hate mail
- Verbal or physical abuse in public places or residential settings

Signs of institutional abuse

- Inappropriate or poor care
- Misuse of medication
- Inappropriate use of restraint
- Sensory deprivation, e.g. denial of use of spectacles or hearing aid
- Lack of respect shown to the vulnerable adult
- Denial of visitors or phone calls
- Restricted access to toilet or bathing facilities

- Restricted access to appropriate medical or social care
- Failure to ensure appropriate privacy or personal dignity
- Lack of flexibility or choice, e.g. mealtimes and bedtimes, choice of food
- Lack of personal clothing or possessions
- Controlling relationship between staff and service users
- Poor professional practice.

Glossary

Abuse

Abuse is a violation of an individual's human and civil rights by another person or persons. Abuse may consist of a single act or repeated acts. It may be physical, verbal or psychological, it may be an act of neglect or an omission to act, or it may occur when a vulnerable person is persuaded to enter into a financial or sexual transaction to which he is she has not consented, or cannot consent. Abuse can occur in any relationship and may result in significant harm to, or exploitation of, the person subjected to it.

Appointee

Someone appointed under Social Security regulations to claim and collect social security benefits on behalf of a person who lacks capacity to manage their own benefits.

Attorney

Someone appointed under either a Lasting Power of Attorney (LPA) or an Enduring Power of Attorney (LPA), who has the legal right to make decisions within the scope of their authority on behalf of the person (the donor) who made the power of attorney. Also known as a donee.

Care home

A home registered with the Commission for Social Care Inspection, or Care and Social Services Inspectorate in Wales, that provides accommodation with personal care. A care home with nursing provides nursing and personal care.

Commission for Social Care Inspection (CSCI)

The single, independent inspectorate for social care (all care providers) services in England.

Capacity

The ability to make a decision about a particular matter at the time the decision needs to be made. The legal definition of a person who lacks capacity is set out in section 2 of the Mental Capacity Act 2005.

Care and Social Services Inspectorate in Wales (CSSIW)

The single, independent inspectorate for social care (all care providers) services in Wales.

Care package

Services designed to meet an individual's assessed needs as part of the care plan arising from their assessment. Consists of one or more services, which may be residential and/or community-based. Where necessary this covers both NHS and social care.

Care plans

Written agreements setting out how care will be provided within the resources available for people with complex needs.

Care Quality Commission

From April 2009, the Care Quality Commission will have responsibility for regulating and improving the quality of health and social care in England and will look after the interests of people detained under the Mental Health Act. It takes over the work of the Commission for Social Care Inspection, the Healthcare Commission, and the Mental Health Act Commission.

Carer

Person who provides a substantial amount of care on a regular basis, and is not employed to do so by an agency or organisation. Carers are usually friends or relatives looking after someone at home who is elderly, ill or disabled.

Care worker

Paid workers that support people with everyday tasks who may be elderly, ill, have physical or learning disabilities, or emotional or social problems.

Continuing care

The criteria for assessing and providing health and social care over an extended time as the result of disability, accident or illness, in order to meet both physical and mental health needs. Continuing care can be provided in a range of settings, including hospital, care home or hospice and the individual's own home. Continuing care aims to provide the right long-term support, to promote independence, prevent deterioration and maximise a person's health and quality of life

Court of Protection

The specialist Court for all issues relating to people who lack capacity to make specific decisions.

Court of Protection Visitor

Someone who is appointed to report to the Court of Protection or Public Guardian on how attorneys or deputies are carrying out their duties.

Criminal Records Bureau (CRB)

An executive agency of the Home Office which provides access to criminal records information. Organisations in the public, private and voluntary sectors can ask the CRB to check candidates for jobs to see if they have any criminal records which would make them unsuitable for certain work, especially that involves children or vulnerable adults.

Data Protection Act 1998

A law controlling the handling of, and access to, personal information, such as medical records, files held by public bodies and financial information held by credit reference agencies.

Day Centre

Facility, run by social services, health or a voluntary organisation, that provides care, stimulation and activities for people who need support during the day and is thus also a valuable source of respite for carers.

Declaration

A kind of order made by the Court of Protection, e.g. whether a person has or lacks capacity to make a particular decision, or declaring that a particular act would or would not be lawful.

Dementia

Term used for different illnesses that affect the brain and diminish the ability to do everyday tasks. 'Dementia' should be used to describe symptoms, not the condition itself. Symptoms include loss of memory; difficulty in understanding people and finding the right words; difficulty in completing simple tasks and solving minor problems; mood changes and emotional upsets.

Deputy

Someone appointed by the Court of Protection with ongoing legal authority as prescribed by the Court to make decisions on behalf of someone who lacks capacity to make particular decisions. A Deputy may be appointed to make decisions in relation to property and affairs (financial) or welfare (including healthcare), or both. A Deputy may be a professional, e.g. solicitors, local authorities, or lay, e.g. family members, friends of the person lacking capacity.

Domiciliary care

Homecare that helps people cope with disability or illness, and allows them to maintain independence.

Donee

Someone appointed by a Donor to make decisions under a Lasting Power or Enduring Power of Attorney.

Donor

A person who makes a Lasting Power of Attorney or Enduring Power of Attorney.

Enduring Power of Attorney (EPA)

A power of attorney created under the Enduring Powers of Attorney Act 1985 appointing an attorney to deal with the donor's property and financial affairs. The Mental Capacity Act 2005 replaced the EPA Act 1985 but existing EPAs continue to operate under Schedule 4 of the Act.

Health

State of complete physical, mental and social well-being – not merely the absence of disease and infirmity

Health Care Commission

The independent watchdog for healthcare (NHS and private) in England.

Health Care Inspectorate Wales (HIW)

A department of the National Assembly for Wales with responsibility for inspecting and investigating the provision of health care by and for Welsh NHS bodies.

Independent Mental Capacity Advocate (IMCA)

Someone who provides support and representation for a person who lacks capacity to make specific decisions, where the person has no-one else to support them.

Independent Safeguarding Authority (ISA)

The Independent Safeguarding Authority's role is to help prevent unsuitable people from working with children and vulnerable adults. From October 2009, employers will be required to ensure that any staff they have working with children or vulnerable adults are checked by the ISA and have gone through the registration process with the Criminal Records Bureau.

Key Worker

Person responsible for co-ordinating the care plan of an individual receiving social care, for monitoring their progress, and for staying in regular contact with the agencies and individuals involved.

Lasting Power of Attorney (LPA)

A power of attorney created under the Mental Capacity Act appointing an attorney or attorneys to make decisions about the donor's personal welfare (including healthcare) and/or deal with the donor's property and affairs.

Learning disabilities

Disabilities that reduce a person's ability to understand new or complex information, learn new skills and cope independently.

Local Authority

Elected council responsible for providing public services such as education, housing and social services within a particular area. Most urban areas, including London, have unitary authorities i.e. one council provides all local government services

Long term conditions

Conditions, such as diabetes, asthma and arthritis that cannot currently be cured, but whose progress can be managed and influenced by medication and other therapies.

NHS Trusts

Hospitals, community health services, mental health services and ambulance services that are managed by their own boards of directors. NHS trusts provide services on the requirements of patients as represented by primary care trusts.

Nursing Home

Care home that provides nursing care (with, generally, at least one registered nurse on duty). Under the Care Standards Act 2000, which came into effect in April 2002, nursing homes were renamed 'care homes with nursing'

Office of the Public Guardian (OPG)

An agency of the Ministry of Justice. The Public Guardian is an officer established under section 57 of the Mental Capacity Act 2005. The OPG supports the Public Guardian to support and promote decision-making for those who lack capacity or wish to plan for their future. It registers powers of attorney, and supervises deputies appointed by the Court of Protection to make decisions on behalf of someone who lacks capacity. It also provides administrative support to the Court of Protection. The OPG replaced the Public Guardianship Office (PGO).

Primary care

The collective term for all services which are people's first point of contact with the NHS, eg GPs, dentists.

Primary care trusts (PCTs)

NHS bodies with responsibility for delivering health care services and health improvements to their local areas. Commissions primary care services within a particular area and is also responsible for providing local community health services.

Social Services Department (*Adult Care Social Services*)

Department of local authority providing needs assessments to determine individuals' eligibility for assistance and ascertain how support can be given to meet eligible needs. Also provides and purchases a range of residential, day and domiciliary care packages to support people in need.

Protection of vulnerable adults (POVA)

Public body initiative set up to specifically address the abuse of vulnerable adults. The POVA list is a register of individuals who have abused, neglected or otherwise harmed vulnerable adults in their care or placed vulnerable adults at risk of harm. A way of preventing the employment of people who should not be appointed to positions of trust e.g. Carers

Public Protection Units

Public Protection Units are specialist units in local police forces that commonly manage and investigate crimes involving adult abuse, child abuse, domestic abuse, sex and dangerous offenders and vulnerable and intimidated

witnesses. They are normally staffed with specialist officers trained on interviewing children and vulnerable adults.

Vulnerable adult

The definition of vulnerable adult that applies to Adult Care Social Services is “a person who is or may be in need of community care services by reason of mental or other disability, age or illness and who is or may be unable to take care of him or her self, or unable to protect him or her self against significant harm or exploitation.”

The OPG’s policy on safeguarding vulnerable adults applies to anyone who has a Deputy appointed by the Court of Protection or is the donor of a registered EPA or LPA, or is someone for whom the Court of Protection has authorised a person to carry out a transaction on their behalf under s16(2)(d) of the Mental Capacity Act (single orders).